



December 1, 2000

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P. O. Box 1748
Austin, Texas 78767

OR2000-4580

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141775.

The Travis County Sheriff's Office (the "sheriff's office") received a request for records related to a specified case number. You have released "front page" information in accordance with section 552.108(c) of the Government Code, but claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information, which consists of an offense report and a witness statement, relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the submitted offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You state that you have released the front page offense report information. Section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, except as noted below.

As to the submitted witness statement, you inform us that you have released it in regard to a previous request for information. However, you argue that that release was not "voluntary" for purposes of section 552.007 of the Government Code. We disagree. This office only considers a governmental body's release of information to be involuntary when the governmental body reasonably believes that it is constitutionally obligated to release the requested information. *See* Open Records Decision No. 454 at 3 (1986). You explain that at the time the sheriff's office released the statement, the sheriff's office felt that it was doing so in furtherance of law enforcement interests. Based on your explanation of the previous release, we do not believe that it was done pursuant to a reasonable belief in a constitutional obligation. Accordingly, we do not consider that previous release of the statement to have been involuntary. *See id.* Therefore, in this case, the statement may not be excepted under sections 552.103 or 552.108. *See* Gov't Code § 552.007; Open Records Decision No. 192 (construing the statutory predecessor to section 552.007 of the Government Code to prohibit a governmental body from engaging in selective disclosure).

However, we believe that the facts involved in this case constitute special circumstances that make the statement confidential under section 552.101 of the Government Code. Section 552.101 protects information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under section 552.101 in conjunction with common law privacy, information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6 (1977). Note that special circumstances does not include "a generalized and speculative fear of harassment or retribution." Open Records No. 169 at 6 (1977). Based on our review of the submitted documents as well as your arguments, we find that you have shown that release of the statement would likely cause an imminent threat of physical danger. Therefore, the sheriff's office must withhold the statement from disclosure.

In conclusion, the sheriff's office may withhold the submitted offense report under section 552.108(a)(1), although the sheriff's office is required to release the front page information under section 552.108(c). As for the submitted witness statement, the sheriff's office must withhold this information under section 552.101.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

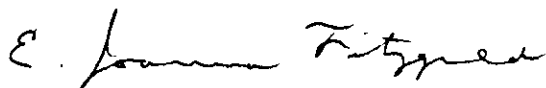
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹Because sections 552.101 and 552.108 are dispositive of this matter, we will not address your other claimed exceptions, except to note that, generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983). Moreover, basic information does not include motor vehicle information.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 141775

Encl: Submitted documents

cc: Mr. Nghia Quan
8007 Fierro Cove
Austin, Texas 78729
(w/o enclosures)